IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 26499 of 2007(D)

OS.25/2007 of SUB COURT, PATHANAMTHITTA
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PETITIONER:

MAJOR K.MATHEWS, 'ANUGRAHA',
NO.1, 3RD MAIN ROAD, ANNAJI NAGAR,
K.K.NAGAR WEST, CHENNAI - 600 078.

BY ADV. MAJOR K.MATHEWS (PARTY-IN-PERSON)

RESPONDENTS:
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1. **K.M.VARGHESE,**
   NO.B1, RATHNA SABHAPATHY STREET,
   OLD WASHERMANPET, CHENNAI-600 021.

2. **K.M.SAMUEL,**
   NO.5-A, NETAJI NAGAR
   5TH CROSS STREET, THIRUVOTTIYOOR,
   CHENNAI-600 019.

3. **O.M.JOSEPH,**
   NO.14, 12TH STREET,
   NANGANALLOOR, CHENNAI-600 061.

BY ADV. SRI.M.NARENDRA KUMAR for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.26499/2007 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PLAINT IN O.S.NO.25 OF 2007 BEFORE THE SUB COURT, PATHANAMTHITTA.**

EXT.P2: **COPY OF POWER OF ATTORNEY EXECUTED BY D2 TO D5 IN OS NO.25/07 IN FAVOUR OF THE 1ST DEFENDANT, MAJOR K.MATHEWS.**

EXT.P3: **COPY OF ORDER OF INJUNCTION DTD. 19/02/07 IN I.A.NO. 184/07 IN O.S.NO.25/07.**

EXT.P4: **COPY OF AFFIDAVIT AND PETITION IN THE STAY PETITION IN THE PROPOSED CMA.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 26499 OF 2007

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Dated this the 27th day of November, 2007.

J U D G M E N T

This writ petition is preferred requesting this Court to exercise its jurisdiction under Article 227 of the Constitution of India for the reason that the Subordinate Judge, Pathanamthitta has not followed the mandate under Order 39 Rule 3-A CPC to exercise jurisdiction under Article 227, to quash the exparte order of interim injunction and to exercise jurisdiction under Article 227 of the Constitution of India to initiate suitable action against the Subordinate Judge and subsequently for a request for transfer of the case. The plaintiffs in the suit are respondents herein had instituted a suit O.S.25/07 and the Court has passed an exparte order of injunction in I.A.184/07. It is submitted that as early as in March, 2007, the writ petitioner filed his counter raising various contentions such as the non-maintainability of the suit, the question of resjudicata etc. and requested the Court

to dispose of the interim injunction application which it did not comply. I am informed by both the sides that the learned District Judge invoking his jurisdiction under Section 24 CPC has transferred the case from the Subordinate Judge, Pathanamthitta to the Subordinate Judge, Thiruvalla and the said order was passed on 1.11.07.

2. The writ petitioner who represents his case in person had brought to my attention a decision of the Punjab and Haryana High Court reported in ***Kulwinder Singh v. State of Punjab (2007 (4) KLT 245)***. It was a case where the High Court was considering jurisdiction under Section 482 Cr.P.C. The writ petitioner had brought to my attention to paragraph 8 of the judgment wherein the Court held that

> "The supervisory jurisdiction extends to keeping the Subordinate Tribunals within the limits of their authority and to seeing that they obey the law. The powers under Art.227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

3. It is a well settled proposition that the inherent power under Article 227 of the Constitution of India can be invoked when there is a gross injustice done to the party or it is totally done against the principles of natural justice and opposed to all laws. Interference by a Court at the interlocutory stage has been decided by the Apex Court in Surya Dev Rai's case ***(Surya Dev Rai v. Ram Chander Rai (2003 (6) SCC 675)***.

4. Now, the writ petitioner would submit that the exparte order of injunction should not have been granted by the Court as the suit itself is barred by resjudicata and it has to be rejected in toto. The question of resjudicata some times may be a mixed question of fact and law and relevant documents may have to be produced to find out whether the said claim is barred by the principles of resjudicata. When a Court passes an order of injunction the Court may not have availability of those documents and when the other side enters appearance and brings it to the notice of the Court, the Court is bound to consider it and answer the same. That is why the Code of Civil Procedure has incorporated Order 39 Rule 4 where a Court on an application can either confirm,

modify or vary the order passed at the interlocutory stage after appearance of the defendants. The classic mandate is incorporated under Order 39 Rule 3A which directs the Court as far as possible to dispose of an interim injunction application within a period of 30 days and adjournment is an exception and disposal is the rule.

5. Unfortunately, in the case before me there had been personal allegation against the Judicial Officer and at last the case has been transferred to the Subordinate Judge, Thiruvalla and as it requires an in depth consideration, the Court has to consider it and dispose of the matter on merits. So, it may not be proper to exercise jurisdiction under Art.227 at this stage and vacate the exparte order of injunction because one cannot hold that it is manifestly vitiated by gross injustice or against the provisions of law which requires application of mind for taking a decision in the case. Therefore, I dispose of the writ petition with the following directions.

(1) The Subordinate Judge, Thiruvalla to whom the case O.S.25/07 is transferred from the Pathanamthitta Subordinate Judge's Court is directed to consider and dispose

of the interim injunction application at the earliest at any rate within a period of three weeks from the date of receipt of records from the Court below. The Subordinate Judge, Pathanamthitta is directed to send the case records in O.S.25/07 immediately so as to enable the Subordinate Judge, Thiruvalla to hear and dispose of the matter at the earliest.

3) The Subordinate Judge, Thiruvalla is directed to give notice to both the parties by giving it to them in their respective addresses or through their representatives, fix a hearing date and dispose of the matter as mentioned above.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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